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12 **UNITED STATES DISTRICT COURT**  
13 **NORTHERN DISTRICT OF CALIFORNIA**

14 MATTHEW ROSS, an individual; for  
15 himself and those similarly situated;  
16 ROBERT MAGEE an individual; for  
17 himself and those similarly situated and  
18 ROES 1 through 30,000 and the proposed  
19 class,

20 **Plaintiffs,**

21 **vs.**

22 ECOLAB, INC., a Delaware Corporation;  
23 and DOES 1 through 100, inclusive,

24 **Defendants.**

Case No.: C 13-05097 PJH

(Removed from San Francisco Superior Court  
Case No. CGC-09-495344)

**DECLARATION OF TIM CUNNINGHAM  
ON BEHALF OF CLAIMS  
ADMINISTRATOR (CPT GROUP, INC.)  
WITH RESPECT TO NOTIFICATION  
AND ADMINISTRATION**

Date: August 31, 2016

Time: 9:00 a.m.

Courtroom: 3

Judge: Hon. Phyllis J. Hamilton

1 I, TIM CUNNINGHAM, declare as follows:

2 1. I am employed by CPT Group, Inc., the Court-approved class action Settlement  
3 Administrator for *Ross, et al. v. Ecolab, Inc.* as a Case Manager, and have personal knowledge  
4 of the facts set forth in this Declaration, and if called as a witness, could and would testify  
5 competently thereto.  
6

7 2. CPT Group, Inc. ("Settlement Administrator") has extensive experience in  
8 providing notice of class actions and administering class action settlements. In the past 25 years,  
9 we have provided notification and/or claims administration services in hundreds of class action  
10 cases.

11 3. Settlement Administrator was selected by the parties to administer the settlement  
12 in this action. In this capacity, Settlement Administrator was charged with (a) printing and  
13 mailing to Class Members the *Notice of Proposed Class Action Settlement and Fairness*  
14 *Hearing* ("Notice"); (b) processing undeliverable mail and locating updated addresses for Class  
15 Members; (c) receiving other communications about the Settlement; (d) receiving objections;  
16 (e) establishing and maintaining a toll free case hotline which Class Members can call and  
17 request case specific information from call center representatives; and (f) issuing and mailing  
18 settlement checks, including the Named Plaintiffs Incentive Award checks, to all Participating  
19 Class Members with respective tax withholdings and reporting.  
20

21 4. Settlement Administrator received the Court-approved text for the Notice from  
22 Class Counsel on May 17, 2016.  
23

24 5. On May 23, 2016, Settlement Administrator received a data file from Defense  
25 Counsel containing the name, last known address, social security number, employment dates,  
26 and number of qualifying weeks worked for each Class Member.  
27  
28

1           6.     On May 31, 2016, Settlement Administrator ran a National Change of Address  
2 (NCOA) search in attempt to update the addresses on the class list and ensure it was as accurate  
3 as possible. A search of this database provided updated addresses for any individual who had  
4 moved in the previous four years and notified the U.S. Postal Service of their change of address.

5  
6           7.     Settlement Administrator prepared a draft of the Notice for mailing to the Class  
7 Members. The mailing consisted of a 6-page Notice. Attached hereto as Exhibit A is a true and  
8 correct copy of the Notice.

9           8.     The Notices were enclosed in envelopes with the Class Member's name and  
10 known address visible through the envelope window. On June 2, 2016, the Notice Packets were  
11 mailed via U.S. first class mail to all Class Members.

12           9.     On July 1, 2016, Settlement Administrator received from Counsel an Order to  
13 Correct Issues with Class Data along with an additional data file. The file contained the data  
14 information for Three (3) additional Class Members and also a notification requesting a  
15 reduction in the estimated amounts for Eight (8) existing Class Members due to their  
16 participation in the *Clark, et al. v. Ecolab*, Civil Action No. 07-8623 ("Clark Settlement").

17  
18           10.    On July 6, 2016, Settlement Administrator mailed a Notice to the Three (3)  
19 additional Class Members and also a letter to the Eight (8) existing Class Members notifying  
20 them of the amount of their reduction.

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22           11.    On August 9, 2016, Settlement Administrator received from Counsel an Order to  
23 Correct Second Issue with Class Data along with information for One (1) additional Class  
24 Member. Settlement Administrator mailed a Notice to the One (1) additional Class Member.

25           12.    As of the date of this declaration, Sixteen (16) Notices were returned to our  
26 office by the Post Office, of which Five (5) had a forwarding address. Settlement Administrator  
27 performed a Skip Trace on all returned mail with no forwarding addresses to locate a new  
28

1 address using Accurant, one of the most comprehensive address databases available. It utilizes  
2 hundreds of different databases supplied by credit reporting agencies, public records and a  
3 variety of other national databases.

4 13. As a result of either skip trace or request from Counsel or Class Member  
5  
6 themselves, a total of Twenty-Six (26) Notices have been re-mailed to date. A total of Six (6)  
7 Notices were initially undeliverable, as no better address was provided from the Post Office or  
8 obtained through skip trace. Counsel has since provided updated or confirmed addresses for  
9 these Six (6) Class Members and Settlement Administrator has re-sent the Notices accordingly.

10 14. As of the date of this declaration, Settlement Administrator has not received any  
11 written objections to the settlement.

12 15. As of the date of this declaration, Settlement Administrator has updated the  
13 number of weeks worked for Two (2) Class Members per agreement of the Parties.

14 16. As of the date of this declaration, Settlement Administrator reports that there are  
15  
16 Two Hundred Seventeen (217) Participating Class Members. This represents a 100%  
17 participation rate. Based on estimated settlement calculations at this time, the average payment  
18 per Participating Class Member is estimated at \$108,602.80 and the highest payment is  
19 estimated at \$264,069.54.

20 17. As of the date of this declaration, CPT estimates the charge for administration  
21 fees to be \$11,500.00. This includes all costs incurred to date, as well as estimated costs  
22 involved in completing the Settlement.  
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1 I declare under penalty of perjury under the laws of the State of California that the  
2 foregoing is true and correct and that this declaration is executed this 9<sup>th</sup> day of August, 2016,  
3 at Irvine, California.  
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5   
6 **TIM CUNNINGHAM**  
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# **EXHIBIT A**

CPT ID: «ID»

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

CPT ID: «ID»   
«EmployeeName»  
«Address1» «Address2»  
«CITY», «STATE» «ZIP»  
«IMPROVE»

CORRECT NAME AND ADDRESS HERE:

Telephone Number: ( ) -

MATHEW ROSS, an individual; for himself  
and those similarly situated; ROBERT  
MAGEE an individual; for himself and those  
similarly situated and ROES 1 through 30,000  
and the proposed class,

Plaintiffs,

vs.

ECOLAB, INC., a Delaware Corporation; and  
DOES 1 through 100, inclusive,

Defendants.

CASE NO: C 13-05097 PJH

(Removed from San Francisco Superior Court  
Case No. CGC-09-495344)

Assigned to: Hon. Phyllis J. Hamilton

CLASS ACTION

**NOTICE OF PROPOSED CLASS ACTION  
SETTLEMENT AND FAIRNESS HEARING**

TO: All Class Members, who are former and current Ecolab Route Managers, Route Sales Managers, and PureForce division Sales Service Route Managers (hereafter referred to collectively as "RSMs"), who worked in California between December 21, 2005 and May 25, 2012, who do/did not cross state lines in performance of their duties, and have not received full and correct pay for all hours worked and have not received accurate itemized wage statements required pursuant to Labor Code section 226, and who have not fully and completely released all of the claims made in this lawsuit.

**THIS NOTICE AFFECTS YOUR RIGHTS.**

**PLEASE READ THIS NOTICE CAREFULLY.**

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CPT ID: «ID»

1 YOU ARE HEREBY NOTIFIED THAT A HEARING HAS BEEN SCHEDULED FOR August 31,  
2 2016, 2016 AT 9:00 A.M. BEFORE THE HONORABLE PHYLLIS J. HAMILTON, DISTRICT  
3 JUDGE FOR THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF  
CALIFORNIA, TO CONSIDER A PROPOSED SETTLEMENT OF THE CLAIMS THAT HAVE  
BEEN BROUGHT ON YOUR BEHALF.

4 This notice summarizes the proposed settlement. For the precise terms and conditions of the  
5 settlement, please see the settlement agreement available at [http://www.palaylaw.com/class-](http://www.palaylaw.com/class-actions/icard-v-ecolab/)  
6 [actions/icard-v-ecolab/](http://www.palaylaw.com/class-actions/icard-v-ecolab/), by contacting class counsel at [brian@strausspalay.com](mailto:brian@strausspalay.com), by accessing the Court  
7 docket in this case through the Court's Public Access to Court Electronic Records (PACER) system at  
8 <https://ecf.cand.uscourts.gov>, or by visiting the office of the Clerk of the Court for the United States  
9 District Court for the Northern District of California, 1301 Clay Street, Oakland, CA 94612, between  
10 9:00 a.m. and 4:00 p.m., Monday through Friday, excluding Court holidays. PLEASE DO NOT  
TELEPHONE THE COURT OR THE COURT CLERK'S OFFICE TO INQUIRE ABOUT THIS  
SETTLEMENT OR THE CLAIM PROCESS.

### 11 ESTIMATED INDIVIDUAL SETTLEMENT AMOUNT

12 ECOLAB's records indicate that during the applicable time period (December 21, 2005 through May 13, 2016),  
13 you worked «DefWorkWeeks» full workweeks as a California Route Manager, Route Sales Manager, or Sales  
14 Service Route Manager ("RSM") for ECOLAB. If you disagree with the full workweeks figure as set forth  
above, you must notify the Claims Administrator in writing by the deadline of July 18, 2016 and attach  
documentation supporting your belief. Failure to provide this information and satisfactory supporting  
documentation of the workweeks you believe you worked for ECOLAB during the applicable time period will  
result in any claim you submit being based solely on ECOLAB's records.

15 **Based on your total full workweeks worked for ECOLAB as an RSM during the Class Period,**  
16 **your estimated payment is «estAmount» ("Individual Settlement Amount").** This estimated  
17 amount is only an estimate. The actual amount of your Individual Settlement Amount may increase or  
18 decrease based on several factors, including the final amounts approved by the Court and disputes  
about workweeks raised by other Class Members. As a result you may receive a smaller, or larger,  
payment. **Please read all of this notice packet for further details regarding the settlement.**

### 19 QUESTIONS

20 If you have questions, please call or write to CPT Group, Inc. at:

21 Ross, et al. v. Ecolab, Inc. Settlement  
22 c/o CPT Group, Inc.  
23 16630 Aston  
24 Irvine, CA 92606  
Tel: (877) 234-9418

### 25 **I. INTRODUCTION**

26 On December 21, 2009, Plaintiff James Icard filed a lawsuit against defendant Ecolab Inc.  
27 (Ecolab) for damages, interest, penalties and other monetary relief for unpaid regular and overtime  
28 compensation under the California Labor Code in the Superior Court of California, County of San  
Francisco. The action was litigated in state and federal court, until the final removal by Ecolab to the



CPT ID: «ID»

1 U.S. District Court, Northern District of California on October 31, 2013. The state court certified the  
 2 case as a class action on May 25, 2012; the United States District Court subsequently declined to  
 decertify the class.

3 Plaintiffs Matthew Ross and Robert Magee were substituted as the class representatives on or  
 4 about August 20, 2013. Class Counsel in this matter is Alejandro P. Gutierrez, Esq. of the law firm of  
 5 Hathaway, Perrett, Webster, Powers, Chrisman, and Gutierrez, and Daniel J. Palay and Brian D.  
 Hefelfinger of Strauss & Palay, APC.

6 In this lawsuit, Plaintiffs Ross and Magee, individually and on behalf of other members of the  
 7 Certified Class, allege that they worked for Ecolab in California and were entitled to overtime  
 8 compensation for hours worked in excess of eight (8) in one day or forty (40) per week, but that  
 Ecolab failed to pay them overtime premium pay for those overtime hours worked. Ecolab denies  
 these allegations.

9 A tentative settlement of the case has been reached with Ecolab. The settlement applies to all  
 10 members of the Certified Class.

## 11 **II. THE REASON YOU HAVE RECEIVED THIS NOTICE**

12 You are a member of the Certified Class as you previously received notice of this matter back  
 13 in 2012 and did not opt-out of the case. Your rights will be affected because the current Class  
 14 Representatives, Matthew Ross and Robert Magee, and Ecolab ("the Parties") have tentatively settled  
 15 the lawsuit. Pursuant to that tentative settlement, the Court is considering the entry and final approval  
 of the settlement. By preliminary approval of the proposed settlement on May 13, 2016, the Court has  
 preliminarily determined that this lawsuit could be settled against defendant.

16 You are hereby notified that:

- 17 1. A settlement of the claims of the Certified Class has been proposed by Class Representatives  
 18 Plaintiffs Ross and Magee, and Class Counsel, on the one hand, and Ecolab, on the other.
- 19 2. The proposed Settlement has been submitted to the Court and has received preliminary  
 20 approval.
- 21 3. You and any other persons in the Certified Class have the right to object to the proposed  
 22 settlement by following the procedures in Parts V of this notice.
- 23 4. A hearing to finally approve the settlement is scheduled for August 31, 2016 at 9:00 A.M. in  
 24 Courtroom 3, at the United States Courthouse, 3rd Floor, 1301 Clay Street, Oakland, CA  
 94612, before the Honorable Phyllis J. Hamilton, U.S. District Judge.

25 At the hearing, any member of the Certified Class may appear and object to the proposed  
 26 settlement. However, no such person shall be heard at the hearing, and no papers or written briefs  
 27 shall be considered, unless the procedures set forth in Part V of this Notice have been followed. You  
 should read that part carefully. Certified Class members who do not make objections in the manner  
 provided in Part V of this Notice shall be deemed to have waived such objections.

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This notice is not to be understood as an expression of any opinion by the Court as to the merits of any claims or defenses asserted by any party in these lawsuits. This notice is sent for the sole purpose of informing you of the pendency of this lawsuit and the terms of the proposed settlement so that you may make appropriate decisions. In the event of any conflicts between this notice and the Settlement Agreement, the terms of the Settlement Agreement shall govern. You may obtain a copy of the Settlement Agreement by contacting Class Counsel, who are identified in Part VI below.

### III. NATURE OF THE LAWSUIT

In this case, Plaintiffs sued Ecolab for damages for nonpayment of overtime for hours worked in excess of eight (8) in one workday or forty (40) in a workweek and for interest and penalties resulting from these violations. Plaintiffs have additionally sued Ecolab for civil penalties for various violations of the California Labor Code, as permitted by the Private Attorneys General Act of 2004, Lab. Code § 2699 *et seq.* ("PAGA"). Ecolab denied and continues to deny all of the allegations made by the Plaintiffs.

The Plaintiffs and Ecolab have tentatively settled this lawsuit. The Settlement has received preliminary approval of the Court, subject to notice being provided to the members of the Classes and final approval by the Court after a public hearing. This proposed settlement is described in the next section.

As a member of the Certified Class, you will receive money from the proposed Settlement if the Court grants final approval. If the Settlement Agreement is approved you will be bound by its terms including the release of claims. If the proposed settlement is not approved, then the offer of settlement will be deemed withdrawn, and the case will proceed in Court as if no settlement had ever been made.

### IV. SUMMARY OF THE RELIEF GRANTED BY THE PROPOSED SETTLEMENT AGREEMENT

For purposes of settlement, and without admitting any liability, Ecolab has agreed to provide certain relief to persons in the Certified Class in exchange for a release of claims. The following is only a summary of the relief contained in the proposed Settlement. In the event there are any conflicts between this Notice and the Settlement Agreement, the terms of the Settlement shall govern. For a copy of the proposed Settlement Agreement, you may contact Class Counsel, whose names, addresses, and telephone numbers are listed below in Part VI. The relief granted by the proposed Settlement Agreement is summarized as follows:

1. Ecolab will pay the total sum ("Sum") of Thirty-Five Million Dollars (\$35,000,000.00), less attorneys' fees and costs awarded to Class Counsel, any enhancement awarded to the Class Representatives James Icard, Matthew Ross and Robert Magee, the costs of the appointed Claims Administrator, and a payment of \$100,000.00 to the California Labor Workforce and Development Agency (LWDA).
2. Out of the Sum, Ecolab will pay reasonable attorneys' fees in a maximum amount not to exceed \$11,550,000 (33% of the Sum) and actual costs incurred by Class Counsel (not to exceed \$100,000). All payments for attorneys' fees and costs will be paid from the Sum,

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1 which will reduce any payments made to the Certified Class. Class Counsel will apply to the  
2 court for approval of their attorneys' fees and costs at the hearing scheduled for August 31,  
2016 at 9:00 A.M.

3 3. Current Class Representatives Matthew Ross and Robert Magee will apply to the Court at the  
4 hearing scheduled for August 31, 2016 for an enhancement payment not to exceed \$8,000 each  
5 in recognition of the time and efforts each has expended in this case on behalf of the Certified  
Class.

6 4. Former Class Representative James Icard will apply to the Court at the hearing scheduled for  
7 August 31, 2016 for an enhancement payment not to exceed \$3,000 in recognition of the time  
and efforts he expended in this case on behalf of the Certified Class.

8 5. The Settlement provides monetary compensation to Certified Class members for unpaid  
9 overtime compensation, interest thereon, and PAGA penalties, as allowed under California  
state law.

10 6. Any Certified Class member has the right to object to the proposed settlement by following the  
11 procedures set forth in Part V below.

12 Based upon the equitable formula that has been devised, there will be substantial differences  
13 among Certified Class members as to the amount each individual participating Certified Class member  
14 will receive in settlement. The formula provides that each Certified Class Member will receive a  
15 portion of the settlement in proportion to the number of weeks that he/she worked for Ecolab as an  
16 RSM compared to all the weeks worked by all the Certified Class Members as an RSM from the time  
period of December 21, 2005 through May 13, 2016. Monies paid pursuant to the Settlement are  
taxable; Ecolab will make all lawful payroll deductions from 50% of each Class Member's payment,  
while the remaining 50% will be paid without payroll deductions.

## 17 **V. HEARING AND PROCEDURE FOR OBJECTING TO THE SETTLEMENT** 18 **AGREEMENT**

19 If you are satisfied with the proposed Settlement Agreement, you do not need to appear at the  
20 hearing at which the Court will consider final approval of the Settlement Agreement. If you object to  
21 the proposed Settlement Agreement, you MUST take the following steps. Your failure to do so will be  
deemed a waiver of your objections and will result in a foreclosure of your right to make any  
objections to the Settlement, whether by appeal or otherwise:

22 A. So that it is postmarked by July 18, 2016, you MUST mail any objection by first class  
23 postage the Court at United States District Court, Northern District of California, United States  
24 Courthouse, Courtroom 3, 3<sup>rd</sup> Floor, 1301 Clay Street, Oakland, CA 94612.

25 B. You can ask the Court to deny approval by filing an objection. You can't ask the Court  
26 to order a larger settlement; the Court can only approve or deny the settlement. If the Court denies  
27 approval, no settlement payments will be sent out and the lawsuit will continue. If that is what you  
28 want to happen, you must object. You may object to the proposed settlement in writing. You may also  
appear at the Final Approval Hearing, either in person or through your own attorney. If you appear  
through your own attorney, you are responsible for paying that attorney.

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1 C. All written objections and supporting papers must (a) clearly identify the case name and  
2 number (*Ross et al v. Ecolab Inc.*, Case Number C 13-05097 PJH), (b) be submitted to the Court either  
3 by mailing them to Class Action Clerk, United States District Court for the Northern District of  
4 California, 1301 Clay Street, Oakland, CA 94612, or by filing them in person at any location of the  
United States District Court for the Northern District of California, and (c) be filed or postmarked on  
or before July 18, 2016.

5 **VI. CLASS COUNSEL**

6 If you have any questions concerning the proposed Settlement Agreement, or this Notice, you  
7 may contact either of the following Class Counsel:

8 Alejandro P. Gutierrez, Esq. at the law firm of Hathaway, Perrett, Webster, Powers, Chrisman,  
9 and Gutierrez, 5450 Telegraph Road, Suite 200, Ventura, California 93003, telephone (805) 644-7111,  
e-mail address: [agutierrez@hathawaylawfirm.com](mailto:agutierrez@hathawaylawfirm.com); or

10 Brian D. Hefelfinger, Esq. at Strauss & Palay, APC, 121 N. Fir Street, Suite F, Ventura,  
11 California 93001, telephone (805) 641-6600, email address: [brian@strausspalay.com](mailto:brian@strausspalay.com).

12  
13 **PLEASE DO NOT TELEPHONE OR CONTACT THE COURT OR**  
14 **THE OFFICE OF THE CLERK FOR INFORMATION REGARDING**  
15 **THIS SETTLEMENT OR THE CLAIM PROCESS.**  
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